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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,930	12/18/2001	William S. Lerner		2542

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03/24/2003

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EXAMINER

POLLARD, STEVEN M

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 03/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

**Office Action Summary**Application No.  
**10/022,930**

Applicant(s)

Lerner

Examiner

Steven Pollard

Art Unit

3727



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). <u>6</u> | 6) <input type="checkbox"/> Other:  |

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 - 9 and 13 - 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGraw in view of Sherman, et. al.

It would have been obvious to one of ordinary skill in the art to have employed a disc containing a thermal preservation fluid in the construction of the device of McGraw in view of the teachings set forth in Sherman, et. al., motivated by the chilling achieved thereby. The employment of a plastic tab extending from the upper surface of the above set forth disc would have been obvious to one of ordinary skill in the art, motivated by the ease of disc removal achieved thereby, attention is directed to Cup ice cream container lids employing an extending tab for ease of lid removal. To have employed the above set forth device with a plastic food container having a sloped sidewall would have been an obvious matter of choice, producing no new and unexpected results, motivated by the wide acceptance and employment of plastic food containers.

3. Claims 10 - 12 and 17 - 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGraw in view of Sherman, et. al. as applied to claims 1 - 9 above, and further in view of Dick.

It would have been obvious to one of ordinary skill in the art to have employed an interior ridge in the device of McGraw as modified above by Sherman, et. al. in view of the teachings of Dick,

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motivated by the insert retention location achieved thereby. To have employed a bottom disc and an intermediate disc would have been obvious to one of ordinary skill in the art, motivated by the increased thermal control achieved thereby.

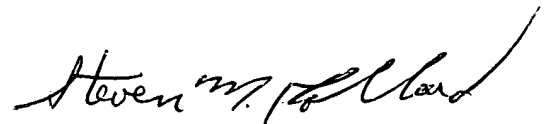
4. Claims 21 - 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21, line 14; "the first freezer disc " has no proper antecedent basis.

5. The references to Gordon, et. al., Launchbury, et. al., and Zirn have been cited to further show related structure.

Steven M. Pollard

19 March 2003



Steven Pollard  
Primary Examiner